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June 30, 2020

APPLICATION GRANTED
SO ORDERED 
VERNON S. BRODERICK
U.S.D.J. 7/1/2020

VIA CM/ECF

Hon. Vernon S. Broderick, U.S.D.J.
Thurgood Marshall United States Courthouse
40 Foley Square, Room 415
New York, NY 10007

The memorandum of law filed under seal at Document 1056 shall remain viewable only to the selected parties.

Re: *In re Keurig Green Mountain Single-Serve Coffee Antitrust Litig.*, MDL No. 2542;
Request to File Rule 72 Appeal Brief Regarding Order on Rule 15 Motion Under Seal

Dear Judge Broderick:

Defendant Keurig Green Mountain, Inc. (“Keurig”) requests that the Court seal confidential information in Keurig’s Memorandum of Law in Support of Keurig’s Motion and Objections to Magistrate Judge’s Order on Rule 15 Motion (“Appeal Brief”) pursuant to Rules 1.A and 5.B of Your Honor’s Individual Rules & Practices, standing order 19-mc-583, and Section 6 of the Court’s ECF Rules and Instructions. We file with this letter the Appeal Brief reflecting the proposed redactions. For the reasons explained below, Keurig seeks to limit viewing on the ECF system to Keurig’s and TreeHouse’s counsel only, excluding counsel for all other Plaintiffs.

In the Appeal Brief, Keurig requests reversal, pursuant to Federal Rule of Civil Procedure 72, of Magistrate Judge Cave’s Memorandum Opinion and Order, ECF 1027, denying Keurig’s motion under Rule 15 to amend its answer to add the affirmative defense of release and covenant not to sue based on a settlement that resolved prior litigation between Keurig and Plaintiff Sturm Foods, Inc. (together with Plaintiffs TreeHouse Foods, Inc. and Bay Valley Foods, LLC, collectively “TreeHouse”). The February 19, 2013 Settlement Agreement between Keurig and TreeHouse in that prior litigation has been submitted to the Court, under seal, in connection with the proceedings before Magistrate Judge Cave. *See* ECF 967-3 (Settlement Agreement); ECF 972 (granting request to seal, *inter alia*, Settlement Agreement). Keurig makes this sealing request pursuant to Paragraph 13 of the Settlement Agreement, which requires that Keurig and TreeHouse maintain the confidentiality of, among other things, the terms of the Agreement.¹ As indicated by the yellow highlighting on pages 2 and 19-22 of the sealed version

¹ Paragraph 13 permits the parties to disclose the fact of the settlement but not its terms and the related discussions and communications, except as required by law or to enforce the terms of the undertaking.

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of the filing, the Appeal Brief includes a description and direct quotes of relevant provisions of the Settlement Agreement that, if not sealed, would reveal certain confidential terms of the Agreement.

Accordingly, pursuant to Paragraph 13 of the Settlement Agreement, Keurig respectfully requests that the Court permit the filing of these limited portions of the Appeal Brief under seal. The proposed sealing is narrowly tailored to protect these confidentiality interests, and Keurig requests that this information remain sealed because it believes this material is the subject of reasonable efforts to maintain confidentiality and its disclosure could cause competitive or commercial injury to Keurig. *See generally Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006). Magistrate Judge Cave previously granted Keurig's requests to seal the same type of confidential information in Keurig's briefs in support of the motion to amend. *See* ECF 972 (sealing order for opening brief); ECF 1012 (sealing order for reply brief).

Respectfully submitted,

/s/ *Rahul Mukhi*

Rahul Mukhi

cc: All Counsel of Record (via ECF)